

# MISSISSIPPI DIVISION OF MEDICAID

## Eligibility Policy and Procedures Manual

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#### **304.01.02B TREATMENT OF REVOCABLE TRUSTS**

In the case of a revocable trust:

- The entire corpus of the trust is counted as an available resource to the individual;
- Any payments from the trust made to or for the benefit of the individual are counted as income to the individual, provided the payment is counted as income under SSI cash assistance rules;
- Any payments from the trust which are not made to or for the benefit of the individual are considered assets disposed of for less than fair market value. Refer to OBRA-93 Transfer of Assets policy.

When a portion of a revocable trust is treated as a transfer of assets for less than fair market value, the look-back period in OBRA-93 transfer policy is 60 months. The 60-month look back period for assets placed in a trust is not phased in as it is for other types of transfers handled under DRA rules.

**Note:** Home property placed in a revocable trust loses its excluded status if the client is in an institution.

#### **304.01.02C TREATMENT OF IRREVOCABLE TRUSTS**

##### **Payment Can Be Made Under Terms of Trust**

In the case of an irrevocable trust, where there are any circumstances under which payment can be made to or for the benefit of the individual from all or a portion of the trust, the following rules apply to that portion:

- Payments from income or from the corpus made to or for the benefit of the individual are treated as income to the individual, provided the payment is counted as income under SSI cash assistance rules;
- Income on the corpus of the trust which could be paid to or for the benefit of the individual is treated as a resource available to the individual;
- The portion of the corpus that could be paid to or for the benefit of the individual is treated as a resource available to the individual; and,

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#### Treatment of Irrevocable Trust (Continued)

##### Payment Cannot Be Made Under Terms of Trust

- Payments from income or from the corpus that are made but not to or for the benefit of the individual are treated as a transfer of assets for less than fair market value. The 60 month look back period for transfer of assets applies.

When all or portion of the corpus or income on the corpus of a trust cannot be paid to the individual, treat all or any such portion or income as a transfer of assets under OBRA-93 transfer policy. In treating these portions as a transfer of assets, the date of the transfer is considered to be:

- The date the trust was established; or,
- If later, the date on which payment to the individual was foreclosed.

In determining for transfer of assets purposes the value of the portion of the trust which cannot be paid to the individual, do not subtract from the value of the trust any payments made, for whatever purposes, after the date the trust was established or, if later, the date payment to the individual was foreclosed. If the trustee or the grantor adds funds to that portion of the trust after these dates, the addition of those funds is considered to be a new transfer of assets, effective on the date the funds are added to that portion of the trust.

Thus, in treating portions of a trust which cannot be paid to an individual, the value of the transferred amount is no less than its value on the date the trust is established or payment is foreclosed. When additional funds are added to this portion of the trust, those funds are treated as a new transfer of assets for less than fair market value.

As indicated, when that portion of a trust which cannot be paid to an individual is treated as a transfer of assets for less than fair market value, **the look-back period is 60 months.**